

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION**

RORY SHANE DAVIS, SR.,

Plaintiff,

v.

UNIT SUPERVISOR MARK D. and  
DONNA BENSON,

Defendants.

CV-18-102-H-BMM-JTJ

**ORDER ADOPTING MAGISTRATE  
JUDGE'S FINDINGS AND  
RECOMMENDATIONS**

Plaintiff Rory Davis, a former prisoner proceeding without counsel, filed a Complaint on October 30, 2018. (Doc. 2). The Court issued an Order informing Mr. Davis that a prisoner may not maintain more than two concurrent non-habeas actions in forma pauperis. (Doc. 4). The Court directed Mr. Davis to show cause why his motion to proceed in forma pauperis should not be denied pursuant to Local Rule 3.1(e)(4). *Id.* Mr. Davis filed a timely response in which he objected to the application of Local Rule 3.1 to his case. (Doc. 5).

Mr. Davis then filed Notices of Change of Address in his other two pending cases, indicating that he had been released from prison on parole. (Civil Action Nos. 18-cv-40-H-DLC-JTJ, Doc. 18; 18-cv-101-H-BMM-JTJ, Doc. 11). Mr.

Davis has not filed a notice of change of address in this matter, but the Clerk of Court has updated his address pursuant to the notices filed in his other cases. (Doc. 6 at 2). Local Rule 3.1 no longer applied in light of his release. The Court required Mr. Davis to refile his motion to proceed in forma pauperis on the Court's long form intended for non-prisoners. (Doc. 6 at 2). The Court directed the Clerk of Court to provide this form to Mr. Davis. *Id.*

Magistrate Judge Johnston entered Findings and Recommendations on May 21, 2019. (Doc. 9). Judge Johnston determined that Mr. Davis's Complaint failed to state a claim upon which relief may be granted. *Id.* at 5-6. The defects found were determined to be incurable by the allegation of additional facts. *Id.* at 6.

Judge Johnston's Findings and Recommendations were sent to the address provided in Mr. Davis's two pending cases. The Findings and Recommendations were returned as not deliverable. (Doc. 10). The Court has not received a change of address from Mr. Davis as directed by the Court. (Doc. 8 at 2).

No party filed objections to Judge Johnston's Findings and Recommendations. The Court has reviewed Judge Johnston's Findings and Recommendations for clear error. *McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). The Court finds no error in Judge Johnston's Findings and Recommendations and adopts them in full.

## ORDER

Accordingly, **IT IS ORDERED** that Magistrate Judge Johnston's Findings and Recommendations (Doc. 9) are **ADOPTED IN FULL**.

**IT IS ORDERED** that Mr. Davis's action be **DISMISSED** for failure to state a federal claim.

The Clerk of the Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. No reasonable person could suppose an appeal would have merit. The record makes plain the Complaints lack arguable substance in law or fact

The Clerk of Court is directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g).

DATED this 21st day of June, 2019.



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Brian Morris  
United States District Court Judge

